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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 28th October, 2024

+ C.O. (COMM.IPD-TM) 84/2024

MOTHER SPARSH BABY CARE PVT. LTD.Petitioner

Through: Mr. Sagar Chandra, Ms. Shubhie
Wahi and Ms. Ankita Seth, Advs.
M: 9711239881

versus

AAYUSH GUPTA & ORS.Respondents

Through: Mr. Rishub Kapoor, Adv.
M: 9654716337
Email: advrishubkapoor@gmail.com

+ CS(COMM) 129/2022 & I.A. 22058/2023

MOTHER SPARSH BABY CARE PVT. LTD.Plaintiff

Through: Mr. Sagar Chandra, Ms. Shubhie
Wahi and Ms. Ankita Seth, Advs.
M: 9711239881

versus

AAYUSH GUPTA & ORS.Defendants

Through: Mr. Rishub Kapoor, Adv.
M: 9654716337
Email: advrishubkapoor@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

**CS(COMM) 129/2022, I.A. 22058/2023 & C.O. (COMM.IPD-TM)
84/2024**

1. The rectification petition, being C.O. (COMM.IPD-TM) 84/2024, has



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been filed praying for removal of the mark 'Plantpowered' from the Register of Trademarks of Trademark No. 4799403 in Class 03 registered in the name of the respondents/ defendants ("impugned mark").

2. It is the case of the petitioner/ plaintiff that the impugned mark of the respondent/ defendants, i.e., 'Plantpowered', is identical to the registered mark of the plaintiff, i.e., 'Plant Powered'. The impugned mark of the respondent/ defendants is not a coined word, but has been completely copied from that of the petitioner's/ plaintiff's registered trademark 'Plant Powered'. The respondents/ defendants have merely added the two words plant and powered in the petitioner's/ plaintiff's mark and have adopted the impugned mark.

3. It is submitted that such minor changes make no difference and the impugned mark 'Plantpowered' is identical with and/or deceptively similar to the trademark 'Plant Powered' of the petitioner/ plaintiff. The goods of respondents/ defendants are of the same description, as those of the petitioner/ plaintiff. Hence, confusion and deception is bound to arise in the course of trade, in view of close and deceptive similarity between the rival marks.

4. The suit being *CS(COMM) 129/2022*, has been filed against the defendants seeking permanent injunction restraining infringement of trademark of the plaintiff, passing off, etc.



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5. The case canvassed on behalf of the plaintiff, is as follows:

5.1 The plaintiff is engaged in the marketing of baby care and personal care products, which are natural and eco-friendly, including, detergent, face wash, face cream, etc. under the trademark 'Plant Powered'. The plaintiff adopted the mark 'Plant Powered' in the year 2019 and launched its baby care products under the said mark, and has been using the same, along with



and



two distinctive logos being

extensively, continuously and uninterruptedly from 2019, till date.

5.2 The plaintiff is the registered proprietor of a label that incorporates the plaintiff's 'Plant Powered' mark, as shown below:

S. No.	Trade Mark and Application No.	Date of Application and User Detail	Class and Specification of Goods and Services	Status	Disclaimer/ Condition/ Association
1.	 4363416	Date of Application: 30.11.2019 User Detail: Proposed to be Used	Class 3: Detergent	Registered and valid up to 30.11.2029	Nil.



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5.3 The plaintiff has thirteen products under the 'Plant Powered' mark, the details of which, as given in the plaint, are as follows:

Mother & Baby Care	Personal Care
1. Laundry Detergent for Babies	1. Ultra-Rich Face Wash
2. Natural Baby Lotion	2. Ultra-Rich Face Cream
3. Natural Baby Wash	3. Natural Under Eye Recovery Gel
4. Natural Baby Face Cream	4. Natural Body Butter (Shea & Cocoa)
5. Natural Diaper Rash Cream	5. Natural Face Mask (Oatmeal & Honey)
6. Natural Baby Soap	
7. Natural Sunscreen Lotion	
8. Natural Baby Shampoo	

5.4 The plaintiff has expended great efforts on the promotion of the products bearing the mark 'Plant Powered' throughout the country. The plaintiff has invested enormous amounts of money and efforts in building the brand equity and has aggressively promoted its 'Plant Powered' products through various forms of media.



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5.5 The plaintiff has been using the mark 'Plant Powered' continuously and uninterruptedly, as demonstrated through the following table:

DATE	PARTICULARS
26.11.2019	Plaintiff adopted the mark PLANT POWERED.
30.11.2019	Plaintiff applied for registration of the label mark  ' under TM Application No. 4363416 in Class 3. The said mark is validly registered and subsisting.
Nov. 2019	Plaintiff launched its 'Laundry Detergent for Babies' under the trademark PLANT POWERED.
Jan. 2020	Plaintiff launched four (4) products, namely 'Natural Baby Lotion', 'Natural Baby Body



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	Wash', 'Natural Baby Face Cream' and 'Natural Diaper Rash Cream' under the trademark PLANT POWERED.
May 2020	Plaintiff launched its 'Natural Baby Shampoo' under the trademark PLANT POWERED.
20.08.2020	Plaintiff received Drug License/ Product Approval for three (3) of its products, namely Body Butter, Face Mask, and Eye Recovery Gel under the mark PLANT POWERED from the Health & Welfare Department, Himachal Pradesh.
03.09.2020	Plaintiff applied for registration of the marks 'PLANT POWERED' and 'MOTHER SPARSH PLANT POWERED' under TM Application Nos. 4638541 and 4638541 respectively in Class 5. The said applications are currently pending.
Oct. 2020	Plaintiff launched its 'Natural Baby Soap' under the trademark PLANT POWERED.
22.11.2020	Plaintiff applied for registration of the mark 'PLANT POWERED' under TM Application No. 4790821 in Class 5. The said application is currently pending.
Nov. 2020	Plaintiff launched three (3) products, namely 'Natural Under Eye Recovery Gel', 'Natural Sunscreen Lotion', and 'Natural Face Mask (Oatmeal & Honey) Detergent for Babies' under the trademark PLANT POWERED.

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Dec. 2020	Plaintiff launched its 'Ultra-Rich Face Wash' under the trademark PLANT POWERED.
13.01.2021	Plaintiff received Drug License/ Product Approval for two (2) of its products, namely Natural Baby Lotion and Natural Baby Shampoo under the mark PLANT POWERED from the Drug Controlling & Licensing Authority, Uttarakhand.
Jan. 2021	Plaintiff launched its 'Ultra-Rich Face Cream' under the trademark PLANT POWERED.
04.05.2021	Plaintiff received Drug License/ Product Approval for six (6) of its products, namely Natural Baby Lotion, Natural Baby Wash, Natural Baby Shampoo, Diaper Rash Cream, Baby Skin Natural & Mineral Sunscreen, and Natural Baby Face Cream under the mark PLANT POWERED from the Health & Welfare Department, Himachal Pradesh.
Nov. 2021	Plaintiff launched its 'Natural Shea & Cocoa Body Butter' under the trademark PLANT POWERED.
12.02.2022	Plaintiff applied for registration of the trademark  ' under TM Application Nos. 5326237, 5326238, 5326239, 5326240 and 5326241 in Classes 3, 5, 16, 25 and 35 respectively. The said applications are currently pending.



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5.6 By virtue of prior adoption, registration, long, continuous, uninterrupted use and extensive promotion, the mark 'Plant Powered' has come to be associated with the plaintiff in respect of baby care products and all kinds of cosmetics/ personal care products, face wash, face cream, shampoo, etc. The mark 'Plant Powered' has come to be associated with the plaintiff and consumers associate goods bearing the same, exclusively with the plaintiff alone, and no one else.

5.7 The mark 'Plant Powered' of the plaintiff is arbitrary and the same has acquired distinctiveness and secondary meaning, such that it is associated solely with plaintiff owing to its long, continuous, uninterrupted and extensive promotion by the plaintiff.

5.8 While the present proceedings were pending, the plaintiff was successful in obtaining several other registrations for the trademarks,



, and , in Classes 16 and 25, with the mark 'Plant Powered' as the essential and prominent feature of the same.

6. On behalf of the petitioner/ plaintiff, it is submitted that they have been using the mark 'Plant Powered' since the year 2019. On the other hand, in the counter statement, respondent no.1/ defendant no.1 has pleaded that he adopted and started using the impugned mark in the year 2019. However, the earliest document filed by the respondents/defendants evidencing use of



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the impugned mark is dated January, 2022. Likewise, the respondents/ defendants have filed documents in the suit evidencing use only from February, 2020.

7. Vide order dated 17th September, 2024, this Court recorded that the respondent/ defendants were ready to settle the matter. Subsequently, vide order dated 22nd October, 2024, this Court recorded the statement on behalf of respondents/ defendants, that they were ready to change their trademark.

8. Learned counsel for the petitioner/ plaintiff has pressed for costs and has submitted that the conduct of the respondents/ defendants has been malicious. It is submitted that upon coming across the impugned registration and impugned products of the respondents/ defendants, the petitioner/ plaintiff issued a legal notice dated 01st February, 2022 to respondent no.1/ defendant no.1. Being served with the petitioner's/ plaintiff's legal notice, the respondent no.1/ defendant no.1, instead of responding to the same, filed a vexatious and false complaint against the petitioner/ plaintiff with Amazon, alleging trademark violations. Owing to this, Amazon de-listed nine of the petitioner's/ plaintiff's products on 08th February, 2022 and another twelve of the petitioner's/ plaintiff's products on 13th February, 2022. Despite various representations made to Amazon by the petitioner/ plaintiff, Amazon only re-listed three out of twenty one of the petitioner's/ plaintiff's products. Therefore, eighteen products of the petitioner/ plaintiff remained de-listed from Amazon for seventeen days, a platform where the petitioner /plaintiff generated a substantial part of its business. Thus, petitioner/ plaintiff incurred substantial losses due to vexatious and malicious acts of respondent no.1/ defendant no.1.

9. It is further submitted by learned counsel appearing for the petitioner/



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plaintiff that the interim application filed by the petitioner/ plaintiff was heavily contested by the respondents/ defendants. Along with their reply, the respondents/ defendants filed forged and manipulated invoices, to plead that they have been using the impugned mark since the year 2020. This Court also took note of and concurred that the invoices filed by defendant nos. 1 to 3, were on the face of it, fabricated and forged, and granted liberty to the plaintiff to seek appropriate relief against the defendants.

10. Having heard learned counsel for the parties, it is to be noted that vide order dated 01st August, 2022, right of defendant nos. 1 to 3 to file their written statement, was closed. Further, vide order dated 01st May, 2023, defendant nos. 1 to 3 were proceeded *ex-parte*. Further, vide order dated 01st May, 2023 and 25th January, 2024, defendant nos. 4 and 5, were respectively deleted from the array of parties of the present suit. Accordingly, the plaintiff filed an application being *I.A. 22058/2023* seeking that the present suit be decreed in terms of Order VIII Rule 10 of Code of Civil Procedure, 1908 (“CPC”).

11. In view of the fact that no written statement has been filed by the defendants in the suit and the defendants have been proceeded *ex-parte*, the various contentions and averments made in the plaint are deemed to be admitted by the defendants. Thus, facts of the present suit stand proven against the defendants.

12. Order VIII Rule 10 CPC provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit, as it thinks fit. On the pronouncement of such judgment, a decree



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shall be drawn up.

13. This Court notes that vide judgment dated 22nd March, 2022, this Court enjoined the defendant from using the mark 'Plant Powered' conjunctively in relation to baby care or personal care products or any goods falling under Classes 03 and 05. Thus, it was held, as follows:

"xxx xxx xxx

9. Heard ld. Counsels for the parties. The question, in the present case, relates to the use of the word and the mark 'PLANT POWERED'. Upon a perusal of the documents placed on record, prima facie, this Court is convinced that the Plaintiff is the prior adopter and the user of the said mark since the year 2019. The earliest document placed on record by the Defendant is one of December, 2020, when the trademark application was filed by the Defendant.

10. It is further noticed that the product of the Defendant is not described with any prefix on the website of Amazon. In fact, it is described as 'PLANT POWERED'. Thus, it is clear that the mark 'PLANT POWERED' is being used as a trademark and not as a description of the products. Moreover, the fact that the Defendant itself applied for the trademark application and registration of the mark 'PLANT POWERED' means that they are estopped from claiming that the same is the description of the product.

xxx xxx xxx

12. The sales of the Plaintiff have been sworn on affidavit and have been placed on record. On the other hand, due to the various discrepancies in the invoices which have been highlighted by the Plaintiff, the sales of the Defendant are not clear at this stage. It appears that there is also some manipulation of the e-way bill and tax invoice which has been placed on record. On the one hand, the tax invoices claim that the products sold are of 'PLANT POWERED', whereas in the e-way bill, there is no mention of the mark 'PLANT POWERED'.

13. The words 'PLANT' and 'POWER' by themselves, when considered as standalone words, may be descriptive. However, when used in conjunction with each other for identical products, there is likely to be confusion between the Plaintiff's products and Defendant's products, as is clear from the invoices which are placed on record by the ld.



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Counsel for the Defendant even today.

xxx xxx xxx

18. In the opinion of this Court, both parties are selling the same kind of products. The mark of the Plaintiff is used prominently on its products. The Plaintiff is clearly the prior adopter and user of the mark. The Defendant's conduct is far from bona fide as the user documents of 2020 filed by the Defendant do not inspire confidence at this stage. The Defendant not only uses the mark 'PLANT POWERED' as a mark but also as a trading style. When a search is conducted for a product of this nature on any e-commerce platform, it is normal for a user to type the words 'PLANT POWERED' in order to search for the product. If such a search is carried out, it would automatically throw up the results with the Plaintiff's and Defendant's product, which ought to be avoided.

19. In light of the facts and circumstances of the present case, the ex parte injunction granted on 24th February, 2022 is confirmed. The Defendant shall stand enjoined during the pendency of the present suit, from using the mark 'PLANT POWERED' conjunctively in relation to baby care or personal care products or any other goods falling under Classes 3 and 5, including but not limited to, face wash, face cream, shampoo, etc., and/or such allied and cognate goods. This would, however, not preclude the Defendant from using the word 'PLANT' and 'POWER' separately in a manner, so as to not cause any deception and confusion to the consumers, with the Plaintiff's mark 'PLANT POWERED'.

20. As is evident from the packaging of the Defendant's products, the products are shown to be marketed by 'PLANT POWERED'. Thus, henceforth, the Defendant shall also not use the trading style 'PLANT POWERED' as an entity. The domain name 'plantpowered.in' shall also stand enjoined during the pendency of the present suit.

21. Insofar as discrepancy between the e-way bills and tax invoices, as elaborated above, is concerned, the Plaintiff is permitted to move an application seeking appropriate reliefs against the Defendant in this regard.

xxx xxx xxx"

(Emphasis Supplied)

14. Perusal of the documents on record, show that the petitioner/ plaintiff

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is the prior adopter of the trademark 'Plant Powered'. The impugned mark 'Plantpowered' is identical with and/or deceptively similar to the trademark 'Plant Powered' of the petitioner/ plaintiff. Both the marks are aurally, visually, structurally and conceptually similar to each other and one cannot be distinguished from the other. Further, it is to be noted that the goods of the respondents/ defendants, are of the same description as those of the petitioner/ plaintiff. Hence, confusion and deception is bound to arise in the course of trade in view of close and deceptive similarity between the rival marks.

15. The use of the marks by the respondent/ defendants is likely to cause confusion and deception in the course of trade. There exists a likelihood of association of the respondents'/ defendants' mark with the petitioner's/ plaintiff's mark.

16. This Court further notes that the respondent/ defendants have adopted the impugned mark 'Plantpowered' by merely adding two words in the petitioner's/ plaintiff's mark, while incorporating whole of the petitioner's/ plaintiff's mark in the impugned mark. Further, due to striking aural and structural similarity with the petitioner's/ plaintiff's mark 'Plant Powered', there is likelihood of passing off and the same would lead to unfair advantage, as well as dilution of the mark of the petitioner/ plaintiff.

17. The use of the impugned mark by the respondents/ defendants will undoubtedly cause confusion and deception in the minds of customers and is bound to deceive potential customers and dealers in the course of trade. The trademarks of the petitioner/ plaintiff and respondents/ defendants are registered for identical products, and the same are being marketed through the same trade channel. Thus, a purchaser of average intelligence and



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imperfect recollection, shall not be able to distinguish between the products of the petitioner/ plaintiff and respondents/ defendants, and is bound to be confused and misled into thinking that products of the respondents/ defendants are connected to the petitioner/ plaintiff, and/or originate from the same source.

18. It is to be noted that Section 11 of the Trade Marks Act, 1999 prohibits the registration of any trademark which is similar to an earlier trademark for identical goods. Since, the impugned mark is deceptively similar to the petitioner's/ plaintiff's mark and is used for identical goods, the same is liable to be rectified.

19. Thus, holding that consumers of any product only retain a general, indefinite or vague impression of a mark and so may be confused upon encountering a similar mark, this Court in the case of *M/s. South India Beverages Pvt. Ltd. Versus General Mills Marketing Inc. and Another, 2014¹*, has held as follows:

“xxx xxx xxx

50. Consumers of any product do not deliberately memorize marks. They only retain a general, indefinite, vague, or even hazy impression of a mark and so may be confused upon encountering a similar mark. Consumers may equate a new mark or experience with one that they have long experienced without making an effort to ascertain whether or not they are the same marks. The consideration therefore is whether one mark may trigger a confused recollection of another mark. Thus, if the marks give the same general impression confusion is likely to occur.

xxx xxx xxx”

(Emphasis Supplied)

20. Thus, the impugned mark of the respondents/ defendants, i.e.,

¹ SCC OnLine Del 1953



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‘Plantpowered’, being visually and phonetically deceptively similar to the petitioner’s/ plaintiff’s mark, ‘Plant Powered’, cannot be allowed to remain on the Register of Trademarks.

21. Further, the petitioner/ plaintiff, is held entitled to decree in its favour. This Court takes note of the submission made by learned counsel appearing for the plaintiff, who seeks only nominal cost of ₹7 lacs. It is to be noted that the listing of the products of the petitioner/ plaintiff, were taken down by the online e-commerce site ‘Amazon’ upon the complaint of the respondents/ defendants. The products of the petitioner/ plaintiff were re-listed by Amazon after many days on account of which the petitioner suffered losses. Further, this Court notes that vide judgment dated 22nd March, 2022 in the suit proceedings, this Court gave a *prima facie* view that there is some manipulation on the e-way bill and tax invoice that had been placed on record by the respondent/ defendant. In view of the facts and circumstances of the present case, as discussed hereinabove, this Court is of the view that the petitioner/ plaintiff is entitled to cost of ₹7 lacs.

22. Considering the detailed discussion hereinabove, the following directions are issued:

22.1. Rectification petition is allowed. The mark of the respondents/



defendants, , registered vide no. 4799403 in Class 03, is cancelled.

22.2 The Trademark Registry shall issue an appropriate notification to this



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effect.

22.3 Decree is passed in favour of the petitioner/ plaintiff and against the respondent/ defendants, in terms of paragraph 47 (i), (ii), (iii), (iv) and (vi) of the plaint.

22.4 The petitioner/ plaintiff, is held entitled to cost of ₹7 lacs, which shall be paid within a period of eight weeks, from today.

22.5 The opposition proceedings filed by the respondents/ defendants with respect to application of the plaintiff for 'Plant Powered' logo



vide application no. 5326237, shall be withdrawn by the defendants.

22.6 Upon an application being filed by the defendants for withdrawal of the opposition proceedings, the same shall be processed expeditiously, by the Trademark Registry.

23. With the aforesaid directions, the present rectification petition and the suit, is allowed and accordingly disposed of, along with the pending application.

24. The Registry is directed to supply a copy of the present judgement to the Trademark Registry, at E-mail: llc-ipo@gov.in, for compliance.

MINI PUSHKARNA, J

OCTOBER 28, 2024/kr